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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,871

12/30/2003

Teresa M. Zander

659-2080

6330

757 7590 10/17/2007  
BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

10/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10749871	12/30/2003	ZANDER ET AL.	659-2080

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CHICAGO, IL 60610

## EXAMINER

Melanie J. Hand

ART UNIT	PAPER
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3761

20071009

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The reply brief filed August 30, 2007 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

Responsive to the reply brief under 37 C.F.R. 41.41 filed on August 30, 2007, a supplemental Examiner's Answer is attached hereto.

Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:

ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

MJH

Art Unit: 3761



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

**MAILED**  
**OCT 17 2007**  
**GROUP 3700**

Application Number: 10/749,871  
Filing Date: December 30, 2003  
Appellant(s): ZANDER ET AL.

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Andrew D. Stover  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the reply brief filed August 30, 2007 under 37 C.F.R. 41.41 in response to a first Examiner's Answer mailed July 2, 2007.

**(1) Real Party in Interest**

The real party in interest is Kimberly-Clark Corporation.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

6,802,833	KUDO et al	10-2004
6,520,330	BATRA	2-2003
6,601,705	MOLINA et al	8-2003
6,318,555	KUSKE et al	11-2001
6,264,776	DIPALMA	7-2001
5,752,945	MOSLEY et al	5-1998
5,531,325	DEFLANDER et al	7-1996
2002/0148749	BRISEBOI et al	10-2002
WO 02/30347 A1	FARRIS et al	4-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al.

In regard to Claim 22, Briseboi discloses a visually coordinated product comprising a product 206 having a body side liner, outer cover, and absorbent core and disposed within a first

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packaging component 310; the first packaging component 310 disposed in a second packaging component 102 and comprising a wrapper element having a first characteristic (e.g. 106) and a fastening element 722 releasably securing the wrapper element in a closed configuration and having said second visual characteristic (e.g. 108); the second packaging component 102 having the first and second visual characteristics 106, 108 (Fig. 2, [0038], [0016]-[0018], [0045]-[0053]).

Briseboi teaches that either the wrapper element of pouch 310 (Fig. 3) or said fastening element 722 (Fig. 7) provides both said first and second characteristics and therefore does not teach that the first packaging component has a wrapper element with a first visual characteristic (e.g. 106 or 108) and that the fastening element has said second visual characteristic. However, since Briseboi teaches that the first and second characteristics build upon one another to provide a complete set of information about the product ('749, ¶0014), provide information in their own rights as stand alone characteristics, and are not redundant, it would be obvious to one of ordinary skill in the art to modify the article of Briseboi such that the wrapper element of pouch 310 contains a first characteristic (such as the wave icon taught by Briseboi) and the fastening element contains a second visual characteristic (such as the word "heavy or light" as taught by Briseboi) with a reasonable expectation of success.

Claims 14, 18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al. in view of Batra (US 6,520,330).

In regard to Claim 14, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual

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characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging. Batra further teaches providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. The package holds a single product component and a plurality of components (Briseboi, [0033]). It is further noted that the language "packaging component is sized and configured to hold a single, individual product component" only requires that the package be capable of doing such and that "a single, individual product component" may still exist among a plurality of product components. The packaging component and a fastening element (reminder tag or tear-away strip) may comprise the first and second characteristics (Figs., [0016]-[0018], [0045]-[0053]).

In regard to Claims 18, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra disclose packaging system for disposable

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consumer products comprising a product and at least one outer packaging. Batra further teaches providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging.

In regard to Claim 20, Briseboi et al. disclose the claimed invention but do not expressly disclose that at least one of the first and second visual characteristics comprises a color. However, it would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise colors since colors and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art.

In regard to Claim 21, the visual characteristics comprise a pattern (Figures).

Claim 16-17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al. in view of Batra (US 6,520,330) in further view of Kudo (US 6,802,833).



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In regard to Claim 16, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra discloses packaging system for disposable consumer products comprising a product and at least one outer packaging. Batra further teaches providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Briseboi et al in view of Batra disclose that the packaging component may be made from any suitable material (Briseboi [0032]) but do not expressly disclose that the packaging component comprises a nonwoven, spunbond material. Kudo et al. disclose packaging for a sanitary product and further disclose that the packaging may comprise a spunbond material (column 7, lines 20-26, column 12, lines 15-39). Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging component of Briseboi in view of Batra to comprise a spunbond material, as taught by Kudo, since Briseboi in view of Batra disclose that the packaging component may be made from any suitable material and Kudo discloses spunbond materials as suitable for packaging sanitary products. Additionally, it would have been obvious to one of ordinary skill in the art to select a spunbond material for the

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packaging component material, since spunbond materials are known for use in sanitary product packaging, as support by Kudo, and it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

In regard to Claims 17 and 23, Briseboi et al. in view of Batra et al. in further view of Kudo disclose that the package may comprise a spunbond material. Briseboi et al. in view of Batra et al. in further view of Kudo further disclose that the packaging component may comprise a see-through material (Kudo, column 16, line 51-column 17, line 8) but do not expressly disclose that the nonwoven has a specific basis weight. However, Briseboi et al. in view of Batra et al. in further view of Kudo do disclose that the basis weight of a paper material affects intensive properties that are visible to the consumer (Batra, column 5, lines 3-24) and that the basis weight should be small so that the product within the packaging component may be easily confirmed visually (Kudo, column 17, lines 1-8). As such, Briseboi et al. in view of Batra et al. in further view of Kudo are considered to disclose the basis weight of the nonwoven material is to be a result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the packaging component material with a specific basis weight, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. (US 6,601,705) in view of Batra and in further view of Briseboi et al.

In regard to Claim 14, Molina et al. disclose a packaging system comprising a product (article) having a body side liner, outer cover, and absorbent core, and further comprising a first

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packaging component (wrapper) and a second packaging component (container), which may all comprise a visual indicator/characteristic (signal color/indicator). Molina et al. disclose that the indicator may be any color, shape, size or the like (column 4, lines 52-67) but do not expressly disclose that the indicator comprises a first and a second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with a indicator comprising first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any indicator may be used to indicate the article's performance characteristics. Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any visual indicator may be used to indicate the article's performance characteristics.

Molina et al. in view of Batra disclose that the packaging components may have a first and second visual characteristic but do not expressly disclose that packaging component (either first or second) comprises a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration. Briseboi et al. disclose a packaging system comprising first and second packaging components and further disclose that the components may comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration; this provides for a reminder tag that can assist the user easily identifying the product the user

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normally purchases, without having to remember specific details associated with the product (Figs., [0038], [0016]-[0018], [0045]-[0053]). One of ordinary skill in the art would have been motivated to modify the packaging components of Molina et al. in view of Batra to comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration, as taught by Briseboi et al., since doing so would provide a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product. Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging components of Molina et al. in view of Batra to comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration, as taught by Briseboi et al., since doing so would provide a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product.

Claims 16-17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. in view of Batra as applied to claim 14 above, and further in view of Kudo (US 6,802,833).

In regard to Claim 16-17 and 23, see previous discussion of these claims over Briseboi et al. in view of Batra (US 6,520,330) in further view of Kudo (US 6,802,833).

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Claims 1, 3-13, 15, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. in view of Batra and further in view of Farris et al. (WO 02/30347).

In regard to Claim 1, Molina et al. disclose a packaging system comprising a product (article) having a body side liner, outer cover, and absorbent core, and further comprising a first packaging component (wrapper) and a second packaging component (container), which may all comprise a visual indicator/characteristic (signal color/indicator). Molina et al. disclose that the indicator may be any color, shape, size or the like (column 4, lines 52-67) but do not expressly disclose that the indicator comprises a first and a second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with a indicator comprising first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). Batra teaches in Col. 8, lines 58-60 that packaging of multiple items together is known and associating characteristics 15 of individual items with each other and with the container promotes aesthetic value. Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra to promote aesthetic value. Molina et al. (by reference to Swanson) in view of Batra discloses that article comprises peel strip (wrapper) removeably connected to the garment side outer cover ('146, column 5, line 18-column 6, line 23). Molina et al. further disclose that the product may comprise the visual indicator (first and second visual characteristics) (Molina column 3, line 29; column 5, lines 1-8; incorporated) and that the peel strip (wrapper) may comprise the visual indicator (first and

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second visual characteristics), but do not expressly disclose that the outer cover comprises the visual indicator. Farris et al. disclose a packaging system for a product having a body side liner, absorbent core, and an outer cover and a packaging component, wherein the product and packaging components comprise visual indicators (whole document). Farris et al. further disclose that the visual indicator may be placed anywhere on the product, which would include the outer cover. Thus one of ordinary skill in the art would have been motivated to modify Molina et al. in view of Batra to provide at least a portion of the outer cover with a first visual characteristic, as taught by Farris et al with a reasonable expectation of success.

In regard to Claims 3-4, Molina et al. do not expressly disclose that the product comprises a substrate between the body side liner and absorbent core; however, it would have been obvious to one of ordinary skill in the art to provide the product with a surge layer, or substrate, since it was known in the art to provide disposable absorbent articles with surge layers, as supported by Mosley et al. (US 5,752,945, column 1, lines 10-23) and DiPalma (US 6,264,776, column 11, lines 51-67). Molina et al. also do not expressly disclose that the surge layer comprises one of the first and second characteristics. However, as discussed for Claim 2, Molina discloses that the product may be colored and Farris et al. disclose that any part of the product may comprise the visual indicators. Thus, it would have been obvious to one of ordinary skill in the art to modify Molina et al. in view of Batra to provide the surge layer with a first visual characteristic, as taught by Farris et al with a reasonable expectation of success.

In regard to Claims 5 and 20, the first and second visual characteristic may comprise colors (Molina et al., whole document; also see Batra, column 6, lines 41-56).

In regard to Claim 6, the first color may be white and the second may be selected from the group consisted of the colors claimed, including black, green, and red (column 4, lines 30-50).

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In regard to Claims 7-10, Molina et al. disclose that the colors may vary in hue and imply that the colors may differ in value (luminosity) and saturation (column 3, lines 12-24; column 4, lines 30-50) but do not expressly disclose that the characteristics have specific values in hue, value, or saturation. However, Molina et al. have disclosed these may be varied to project the desired visual indication to a consumer. As such, hue, value, and saturation are considered result effective variables. Thus, it would have been obvious to one of ordinary skill in the art to vary the hues, values, and saturations of the colors of the various components of Molina et al., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claims 11, 12 and 21, the visual characteristics may be embossments or patterns (Batra, column 8, lines 22-49). Furthermore, as discussed for Claim 1, Molina et al. disclose that the indicator may be any color, shape, size or the like. It would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise an embossment or a pattern since colors, embossments, and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art.

In regard to Claims 13 and 15, the package holds a single product component and a plurality of components (Molina, Figures, column 2, line 48-column 3, line 40). It is further noted that the language "packaging component is sized and configured to hold a single, individual product component" only requires that the package be capable of doing such and that "a single, individual product component" may still exist among a plurality of product components.

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In regard to Claim 24, the colors may be non-white and non-black (Molina, column 4, lines 38-41).

#### **(10) Response to Argument**

Appellant's arguments filed August 30, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claim 22 as unpatentable over Briseboi: Applicant argues that there is no suggestion to modify the article of Briseboi such that the wrapper element 310 has a first visual characteristic and the fastening element 722 has a second visual characteristic, because there is no motivation to separate the scale of reference 106 from pointer 108, as doing so would destroy the function of the indicator system of Briseboi. This is not found persuasive because in Fig. 6 of Briseboi, two pouches are shown wherein in one, wrapper 310 has a first visual characteristic disposed entirely thereon, and on the second pouch, the visual characteristic is tag 722, which is an adhesive-backed tag clearly depicted in Fig. 6 as the fastening element holding the wrapper 310 closed. The Office recited the wave icon and text as examples only. Since claim 22 does not require that the visual characteristic be associated with each other in any way, Briseboi fairly suggests in Fig. 6 an article in which a wrapper element 310 has a first visual characteristic thereon and a fastening element 722 having a second visual characteristic thereon, thus meeting the limitations of claim 22.

The remainder of applicant's arguments regarding the claim rejection filed on August 30, 2007 have been addressed in the Office action mailed July 2, 2007 and will not be addressed herein. See MPEP 1208 (II).



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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

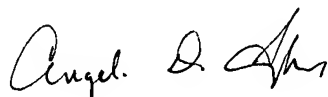
Respectfully submitted,

  
Melanie Hand

Conferees:

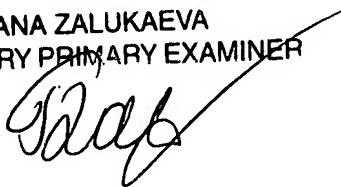
Angela Sykes

Tatyana Zalukaeva



**ANGELA D. SYKES**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**



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Date of Deposit: August 30, 2007

BRINKS  
HOFFER  
GILSON  
& LIONE

Our Case No. 659/2080  
K-C Ref. No. 19,996

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Zander, et al.

Serial No.: 10/749,871

Filing Date: December 30, 2003

For: VISUALLY COORDINATED  
ABSORBENT PRODUCT

Examiner: Hand, Melanie Jo

Group Art Unit No.: 3761

**APPELLANTS' REPLY BRIEF**

MS APPEAL BRIEF - PATENTS  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 41.41 and in response to a first Examiner's Answer mailed July 2, 2007, Applicants respectfully request entry of the present Reply Brief.

### NEW GROUNDS OF REJECTION

The Examiner's Answer includes a new ground of rejection of claim 22. In particular, the Examiner has now rejected claim 22 under 35 U.S.C. 103 as being made obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi, rather than under 35 U.S.C. 102 as being anticipated by Briseboi, as previously asserted. Applicants gratefully acknowledge the Examiner's statement that Appellant's arguments with respect to the rejection of claim 22 under 35 U.S.C. 102 have been fully considered and are deemed persuasive (Answer at 19), thereby precipitating the new grounds of rejection.<sup>1</sup>

Pursuant to 37 C.F.R. 41.39 (b)(2), Applicants hereby request that the Appeal be maintained. Applicants have provided sections entitled Status of Claims, Grounds of Rejections To Be Reviewed On Appeal, and Argument (*see* 37 C.F.R. 41.39(b)(2); MPEP 1207.03).

### STATUS OF CLAIMS

The status of claims has not changed. In particular, claims 1, 3-18 and 20-24 are pending in the above-referenced application. Applicants previously cancelled claims 2 and 19. Claims 1, 3-18 and 20-24 (*see* Appellants' Brief at Appendix A) have been rejected and are all being appealed.

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<sup>1</sup> Applicants respectfully disagree with the Examiner's assertion that the new grounds of rejection of claim 22 was introduced "solely to address appellant's remarks, page 25-27, which are newly presented" (Answer at 14). Applicants previously made similar arguments in an Amendment and Reply to January 12, 2006 Office Action filed May 15, 2006 (*see* page 14).

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Whether claims 1, 11-13 and 15 are unpatentable as being made obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and International Publication No. WO 02/30347 to Farris.

Whether claims 3 and 4 are unpatentable as being made obvious over Molina in view of Batra and Farris.

Whether claims 5-10 and 24 are unpatentable as being made obvious over Molina in view of Batra and Farris.

Whether claim 14 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and U.S. Patent Application Publication No. US 2002/0148749 to Briseboi.

Whether claim 14 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra.

Whether claim 16 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra and U.S. Patent No. 6,802,833 to Kudo.

Whether claim 16 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and Kudo.

Whether claim 17 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra and Kudo.

Whether claim 17 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and Kudo.

Whether claim 23 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra and Kudo.

Whether claim 23 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and Kudo.

Whether claims 18 and 21 are unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra.

Whether claim 20 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra.

Whether claim 22 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi.

### ARGUMENT

**(1) Claim 22 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi**

Claim 22 recites “a first packaging component having at least first and second visual characteristics, wherein said product component is disposed in said first packaging component, *wherein said first packaging component comprises a wrapper element having said first visual characteristic and a fastening element having said second visual characteristic*; and a second packaging component having said at least said first and second visual characteristics, wherein said first packaging component is disposed in said second packaging component.”

The Examiner now admits that Briseboi “does not teach that the first packaging component has a wrapper element with a first visual characteristic (e.g. 106 or 108) and that the fastening element has said second visual characteristic” (Answer at 4), and has therefore withdrawn the prior rejection under 35 U.S.C. 102 (Answer at 19). Instead, the Examiner now asserts that Briseboi teaches that the first and second characteristics “build upon one another to provide a complete set of information about the product . . . , provide information in their own rights as stand alone characteristics, and are not redundant,” such that it would have been obvious to one of ordinary skill in the art to modify the article of Briseboi to provide the wrapper element with a first characteristic and the fastening element with a second characteristic (Answer at 4). Applicants respectfully disagree.

In particular, Applicants first submit that the “scale of reference” 106 of Briseboi would never be used separately from the “pointer” 108, which defines a “position, level or

degree on the scale of reference 106" (Briseboi at para. 37). Indeed, without the pointer 108, the scale of reference 106 is meaningless to the user.

Moreover, one of ordinary skill in the art would not be led to separate the icon (wave mark) from the corresponding text (e.g., moderate), let alone put one on a substrate 722 and the other on the pouch 310 (Briseboi at FIG. 7; paras. 45-48). Indeed, such separation would require two separate application steps during manufacture, thereby increasing the cost and complexity of the system and device with no apparent advantage. Simply put, there is no reason for one of ordinary skill in the art to make such a modification.

Moreover, Briseboi discloses that the indicia are provided on the substrate 722, such that it can be peeled off to form a reminder tag 723 (Briseboi at para. 47). The consumer then compares the reminder tag 723 with a receptacle 102 at the store, such that the consumer can "easily identify the type of sanitary napkin the user normally purchases, without the need of remembering the details such as the particular brand, absorption characteristics, configuration, materials used in the construction of the sanitary napkin, etc." (Briseboi at para. 48). As such, Briseboi teaches the importance of maintaining the information on the reminder tag 723, rather than on a wrapper 310, which is discarded by the consumer. As such, there is no reason for one of ordinary skill in the art to modify Briseboi to separate the information on the substrate 722 and the pouch 310.

*of the new  
pkg  
it's  
on the wrapper  
at the store*

For at least these reasons, the Examiner's rejection of claim 22 should be withdrawn.

**(2) Remarks About the Examiner's Response to Argument**

The Examiner's arguments concerning claims 1, 3-18, 21, 21, 23 and 24 set forth at pages 5-14 of the Examiner's Answer are essentially identical to those presented in the Final

Office Action mailed August 10, 2006, with the exception of some omissions and minor grammatical changes. Applicants' responses to those arguments were presented in Appellant's Brief, and will not be rehashed here. Instead, Applicants take this opportunity to address the substantive arguments made in the Examiner's Response to Argument.

**(a) Claims 1, 11-13 and 15 are Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and International Publication No. WO 02/30347 to Farris.**

The Examiner asserts that Swanson "teaches that the adhesive element can be in strips, and so the release paper would only cover the select areas of adhesive and not the entire outer cover of the pad" (Answer at 14-15). Applicants respectfully disagree with the Examiner's interpretation of Swanson. While the adhesive may be applied in strips, there is absolutely no teaching or suggestion in Swanson that the peel strip or wrapper 40 also is formed in strips. Indeed, just the opposite is true – Swanson discloses that the "wrapper 40 is associated with, and has dimensions generally larger than those of the catamenial pad 10" (Swanson at Col. 5, lines 30-60). Indeed, if the wrapper were also formed in strips, it would not function as a "wrapper" anymore, and would render Swanson inoperative for its intended purpose (*see* Swanson at Col. 2, lines 5-32; it is an object of Swanson to provide a wrapper "thereby providing an individually packaged disposable absorbent article," and further to provide an article "in which the wrapper overlays the adhesive element thereby eliminating the need to provide a release paper"). Moreover, one of ordinary skill in the art would not be motivated, or otherwise have a reason to provide a plurality of separate peel strips, as such a construction would require the end user to remove each strip, thereby complicating the process and risking contamination caused by the handling of the device.



Next, the Examiner misses the point with respect to Farris (*see* Answer at 12). In particular, Farris, as with Molina, does not disclose or suggest first *and* second indicia on both the product *and* the packaging (*see* Answer at 11 – Molina does “not expressly disclose that the indicator comprises a first and second characteristic.”) Rather, Farris teaches using a single color intensity for any one product (Farris at Abstract). As such, even if combined, Molina and Farris do not satisfy claim 1. Moreover, Applicants dispute that Farris expressly discloses that the visual indicator is in fact placed on an “outer cover,” which is not visible to the user, as asserted by the Examiner, since Farris emphasizes the use of such an indicator on products visible to the user (Farris at pages 10-12), just like Molina. As such, Farris does not provide the deficiency of Molina.

The Examiner also asserts that Batra teaches first and second characteristics on the article and on the packaging (Answer at 15). Applicants disagree – Batra teaches different indicia on the product and packaging (Col. 5, lines 62-64).

The Examiner also asserts that Batra teaches “associating characteristics of individual items with each other and with the container promotes aesthetic value” (Answer at 11), and therefore it would be obvious to modify the system of Molina to promote aesthetic value (Answer at 12). Likewise, the Examiner asserts that Molina and Batra “clearly seek to solve a similar problem in the art” (Answer at 15). Applicants respectfully disagree.

Molina is directed to providing information about the predetermined characteristics of a product (Molina at Col. 1, lines 42-64; Col. 4, lines 52-67; Col. 2, lines 54-58), and matching an indicator on the product with an identical indicator on the packaging (Abstract; Col. 2, lines 48-59). In sharp contrast, Batra discloses using *different* indicia on the product

and packaging, which would only obfuscate the relationship between the product and packaging (Batra at Col. 5, lines 62-64; Col. 6, lines 30-56), contrary to the intended purpose and operation of Molina.

**(b) Claims 5-10 and 24 are Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and International Publication No. WO 02/30347 to Farris**

The Examiner asserts that Batra teaches color change as a step in conversion of indicia, and that “one can physically stop the process at wherein the colors can feasibly be the same” (Answer at 16). Applicants submit that if “color” change is employed by Batra to convert a first indicia to a second indicia, then clearly Batra teaches against “stopping” such a change. Moreover, the Examiner’s arguments ignore that Batra fails to disclose or suggest first and second colors on *each* of the packaging and product components. The Examiner also does not dispute Applicants arguments about Molina teaching away from having two indicia on the *same* product and also on a packaging component.

**(c) Claim 14 is Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent Application Publication No. US 2002/0148749 to Briseboi**

As admitted by the Examiner, Molina and Batra do not disclose that the “packaging component “comprises a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration” (Answer at 10). However, as noted above with respect claim 22, the Examiner now also acknowledges that Briseboi also does not disclose this recitation. Indeed, the Examiner’s statements about Briseboi at page 10 (“Briseboi et al. disclose[s] a packaging system comprising first and second packaging component and further

disclose[s] that the components may comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration”) is inconsistent with the Examiner’s statement about Briseboi at page 4 (“Briseboi . . . does not teach that the first packaging component has a wrapper element with a first visual characteristic (e.g. 106 or 108) and that the fastener element has said second characteristic”). Applicants submit that the Examiner’s statement at page 4 is correct, as further acknowledged by the Examiner in withdrawing the anticipation rejection of claim 22 over Briseboi.

As such, the Examiner has failed to make out a prima facie case of obviousness since all of the elements of claim 14 are not disclosed or suggested by the cited references. Applicants further submit that there is no suggestion to modify Briseboi to provide a wrapper element having a first visual characteristic and a fastening element having a second visual characteristic for at least the reasons set forth above with respect to claim 22.

**(d) Claim 16 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo**

The Examiner asserts that Appellants have argued that the references fail to show certain features which are not recited in claim 16 (Answer at 17-18). The Examiner’s argument misses the point. Applicants were arguing that, when viewing the references as a whole, there is no suggestion, motivation or reason to combine Briseboi and Batra, and in particular, to modify the product of Briseboi by applying a visual characteristic on a product within a pouch, as purportedly taught by Batra (Answer at 7 and 18). In this way, it is

irrelevant whether the features or aspects of those references, which teach away from the suggested combination, are actually recited in the claims.

**(e) Claims 17 and 23 are Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi or U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo**

The Examiner asserts that “the entirety” of Applicants arguments about the patentability of claims 17 and 23 over Briseboi in view of Batra and Kudo, or over Molina in view of Batra and Kudo, depend on prior arguments made with respect to claims 1 and 16 (Answer at 18-19). Applicants respectfully disagree. While claims 17 and 23 depend from claim 16, and are therefore patentable for at least the same reasons as claim 16, and, to the extent there is no suggestion to combine the same references, for at least the same reasons as claim 1, Applicants also presented other basis for patentability (Appellants’ Brief at 22-24).

Moreover, by coordinating elements of the absorbent product, and/or by coordinating the absorbent product with the packaging, the manufacturer can use a relatively see-through packaging material, for example a relatively light basis weight non-woven material, *without* presenting a product that is easily recognized by others as an absorbent product (Specification at 1-3 and 17). In contrast, Kudo discloses just the opposite – the ability to ascertain the absorbent article through the sheet (Kudo at Col. 16, line 51 to Col. 17, line 9 (altering the packaging “so that the absorbent article can easily be confirmed visually”). As such, Kudo teaches against using the same first and second visual characteristics on the packaging component and on the product component, which would tend to obfuscate the contents of the package rather than ensuring that the product is easily recognizable, as taught by Kudo (*Id.*). Conversely, as set forth in Appellants’ Brief, the entire premise of Briseboi

and Molina is to provide a system wherein the user knows what the product is inside *without* having to open the individual package – which is just the opposite of Kudo. Therefore, not only do each of Briseboi, Molina and Kudo individually teach against the claimed invention, there also is no suggestion, motivation or any other reason to combine Briseboi, Molina and Kudo. Accordingly, claims 17 and 23 are patentable over the cited references.

**CONCLUSION:**

In summary, the cited references do not make obvious the inventions defined by the present claims. Accordingly, Appellants submit that the present inventions are fully patentable over the cited references, and the Examiner's rejections should be REVERSED.

Respectfully submitted,



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